

**IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:07CR165-4**

UNITED STATES OF AMERICA, )  
                                )  
Vs.                           )                           **ORDER**  
                                )  
**PHILLIP EUGENE FORREST.** )  
                                )  
\_\_\_\_\_ )

**THIS MATTER** is before the court upon defendant's own Petition for Writ of Habeas Corpus *Ad Testificandum* (#432). For cause, defendant states that he is needed to testify in a state criminal proceeding wherein he is allegedly the victim. However, a federal detainee cannot move this court for his own transfer to state custody for the purpose of giving testimony. First, no court can *writ* a prisoner to another court; instead, a writ commands the custodian of a person to bring that person *before* that court. Instead, a judge of the State of North Carolina must issue a writ directed to the Executive Branch of the United States, which it does through execution of North Carolina's standard form AOC-Cr-223 in the case of writs *ad prosecuendum*, and which they typically strike through and put in the words "*ad testificandum*" when they desire a prisoner's presence for the limited purpose of testifying in a state-court proceeding. When the United States Marshal receives such properly executed form, it forwards the form to the United States Attorney for review and approval. There is no federal judicial role in such process.

**ORDER**

**IT IS, THEREFORE, ORDERED** that defendant's Petition for Writ of Habeas Corpus *Ad Testificandum* (#432) is **DENIED** as being non justiciable.

Signed: August 22, 2007

Dennis L. Howell

Dennis L. Howell  
United States Magistrate Judge

